No. 87-1261

In the Supreme Court of the United States

OCTOBER TERM, 1987

BILL HONIG, SUPERINTENDENT OF PUBLIC INSTRUCTION FOR THE STATE OF CALIFORNIA, ET AL., PETITIONERS

v.

WILLIAM J. BENNETT, SECRETARY OF EDUCATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Secretary of Education is entitled to pre-judgment interest in this case.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is reported at 831 F.2d 875. The order of the district court (Pet. App. 10a-13a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 2, 1987. The petition for a writ of certiorari was filed on January 27, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners' debt to the Department of Education[1] arose from the State's misuse of federal monies provided

[1] The Department of Education was created in 1980. See Department of Education Organization Act, 20 U.S.C. 3401 *et seq.* Before that time, the agency was called the Office of Education and its chief

under Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. (1976 ed.) 241a *et seq.*[2] Congress created Title I to improve the educational opportunities available to disadvantaged children (20 U.S.C. (1976 ed.) 241a), and authorized the Secretary to provide financial assistance in the form of grants to state educational agencies upon their assurances that the funds would be spent only on programs that comply with all statutory and regulatory requirements (20 U.S.C. (1976 ed.) 241f). States must repay to the Secretary any Title I funds spent in contravention of these requirements. See *Bell* v. *New Jersey*, 461 U.S. 773 (1983).

In 1978, after auditing petitioners' records and providing an administrative hearing, the Secretary determined that petitioner Hayward Unified School District had misspent more than $108,000 in Title I funds between 1970 and 1972 (Pet. App. 4a). After receiving the Secretary's final decision, the State of California filed a petition for review of this decision in the court of appeals (*ibid.*). The court eventually dismissed this petition for lack of jurisdiction.[3] Although the State could have filed a

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administrator was the Commissioner of Education. For simplicity, we use only the current names: The Department of Education and the Secretary of Education.

[2] The statute subsequently was amended and reorganized in the Education Amendments of 1978, 20 U.S.C. 2701 *et seq.* As of July 1, 1982, the Title I program was superseded by Chapter 1 of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. 3801 *et seq.* These later legislative enactments have no bearing on this case. See *Bennett* v. *New Jersey*, 470 U.S. 632, 641 (1985).

[3] An appeal of the Secretary's decision should have been filed in the district court. See *Bell* v. *New Jersey*, 461 U.S. at 777 n.3. The judicial review procedure for this type of audit dispute subsequently was altered by Congress to provide for direct review in the appropriate court of appeals. See 20 U.S.C. 1234d, 2851.

proper petition for review in the district court, it did not do so (*ibid.*).

Almost a year and a half after the State's petition for review was dismissed—and two and a half years after the Secretary's final decision—the Secretary sent the State a letter demanding repayment of the misspent funds (Pet. App. 4a). This letter informed the State that the Secretary would begin to assess interest on the outstanding debt if the State did not satisfy its obligation within 30 days (*ibid.*). The State ignored this request (*ibid.*). After a second letter failed to bring repayment, the Secretary sent a third demand letter, which raised the possibility that the Secretary would obtain repayment by offsetting the State's debt—including the interest that had accrued since April 16, 1981 (30 days after the Secretary's first demand letter)—against current grant funds (*ibid.*).

2. After receiving the Secretary's third demand letter, petitioners filed this action in the district court. They alleged that the Secretary had erroneously concluded that they had misspent the funds in question, and that, in any event, the Secretary could not recover these funds from current grant monies (Pet. App. 4a). The Secretary filed a counterclaim asserting that the United States was entitled to the misspent funds, plus prejudgment interest (*ibid.*). The Secretary did not request interest from the date of the wrongful expenditures (1970-1972) or even from the date he determined that petitioners had misspent Title I funds (1978); rather, he only sought interest from April 16, 1981—30 days after his first formal demand for repayment which had notified the State that interest would accrue if repayment was not made within 30 days (*ibid.*).

The Secretary moved for summary judgment and the district court granted this motion in part (see Pet. App. 11a). The court ruled that petitioners' failure to seek timely judicial review of the Secretary's decision in the proper

court made that decision final and unreviewable; petitioners were therefore bound by the findings of fact and conclusions of law contained in that decision (*ibid.*). The court thus upheld the Secretary's determination that petitioners had misspent $108,701 in Title I funds (*ibid.*). The court further held that the Secretary had both a statutory and a common law right to collect these misspent funds through an administrative offset of current grants (*ibid.*). The court, however, reserved judgment on whether the Secretary was entitled to prejudgment interest (*ibid.*).

The Secretary then filed a motion for summary judgment granting prejudgment interest. The district court ruled that the Secretary could not receive interest for any time prior to its judgment, and denied the motion (Pet. App. 12a). The court interpreted this Court's decision in *Pennhurst State School & Hospital* v. *Halderman*, 451 U.S. 1 (1981), as establishing a constitutional prohibition against imposing any financial liability on a state under a federal grant program except where Congress has expressly set forth the conditions of such liability and the state has accepted them (Pet. App. 12a). Because Title I did not explicitly provide that states must pay interest on delinquent debts, the court concluded that the Secretary could not collect prejudgment interest from petitioners (*ibid.*).[4]

3. The court of appeals reversed the district court's denial of prejudgment interest (Pet. App. 1a-9a).[5] It held that under this Court's recent decision in *West Virginia* v. *United States*, No. 85-937 (Jan. 13, 1987), the Secretary

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[4] The court did allow postjudgment interest pursuant to 28 U.S.C. 1961.

[5] Petitioners did not appeal the district court's affirmance of the Secretary's decision that they had misspent the funds in question, or its decision that the monies could be recovered by an offset against current grant funds.

was entitled to the interest that he sought. Even assuming that petitioners were correct in asserting that *West Virginia* requires a balancing of the interests of the state and federal governments, the court held that in this case "the balance should be weighted in favor of the allowance of [prejudgment] interest" (Pet. App. 5a). The court of appeals also rejected the district court's reading of *Pennhurst*. It held that "[i]t is clear from the Supreme Court's subsequent decision in *Bell v. New Jersey*, 461 U.S. 773 (1983) that *Pennhurst* is not applicable to the State's liability for prejudgment interest" (Pet. App. 8a).

ARGUMENT

The decision of the court of appeals is correct and fully comports with this Court's decisions in *West Virginia* and *Bell* v. *New Jersey*. Further review by this Court accordingly is not warranted.

1. Petitioners assert that the court of appeals erred in applying *West Virginia* to the facts of this case (Pet. 5-7).[6] They suggest that the analysis contained in *West Virginia* is limited to " 'ordinary commercial contract[s]' " (Pet. 5-6 (citation omitted)), and that Title I "requires a different approach * * * than does an arms-length contract involving bricks and mortar or rocks and soil" (*id.* at 7). Petitioners' contention, however, is conclusively rebutted by *West Virginia* itself. The Court there explained (slip op. 4) that the federal rule governing the award of prejudgment interest against a state—which requires a federal court to "consider the interests of the two governments involved"—was first enunciated in *Board of County Commissioners* v. *United States*, 308 U.S. 343, 350 (1939). And in *Board of County Commissioners*, the government's claim against

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[6] Petitioners concede that the Debt Collection Act of 1982, 31 U.S.C. 3701 *et seq.*, has no application to this case (Pet. 7 n.4).

the State did not arise from an " 'ordinary commercial contract[].' " Rather, it arose out of the federal government's efforts to recover state taxes wrongly imposed on Indians. There can thus be no doubt that the general rule applied in *West Virginia* is broad enough to encompass the Secretary's claim for prejudgment interest here.

It is equally clear that the court of appeals correctly assessed the competing concerns of the Secretary and petitioners in concluding that the Secretary is entitled to the prejudgment interest that he seeks.[7] "Prejudgment interest is an element of complete compensation" (*West Virginia,* slip op. 5). Absent such an award, the creditor will not be "compensate[d] for the loss of use of money * * * from the time [his] claim accrues until judgment is entered" (*id.* at 5 n.2). The debtor had the use of the money from the time the debt arose until the judgment was entered. The decision to award prejudgment interest simply recognizes that the debtor should pay for the benefit he has received at the expense of the creditor.[8]

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[7] In the court of appeals, we argued that petitioners had to demonstrate a compelling interest in order to deny the Secretary complete compensation for the monies that they had misspent (Pet. App. 5a). While we still believe that this interpretation of *West Virginia* is correct, we also agree with the court of appeals that this issue need not be addressed in this case, because even an unweighted balancing of the interests of the respective governments requires an award of prejudgment interest.

[8] Prejudgment interest is appropriate here for two other reasons: First, petitioners misspent more than $100,000, as measured in early 1970's dollars. The district court's judgment, which was issued in 1985, measured petitioners' obligation in terms of then current dollars. Denial of prejudgment interest therefore would exacerbate the disadvantage to the federal government resulting from the change in the value of the dollar between 1972 and 1985. Second, without liability for prejudgment interest, debtors such as petitioners would have little incentive to satisfy or otherwise settle meritorious claims against

In sum, as the court of appeals recognized (Pet. App. 6a), "[o]nly an award of prejudgment interest will fully compensate the [Secretary] for the funds wrongfully withheld by [petitioners]. * * * Such an award will serve the purposes of Congress reflected in Title I by insuring that moneys appropriated for use under Title I are devoted to service of the intended beneficiaries—disadvantaged children—rather than to the relief of [petitioners'] taxpayers." Moreover, as the court of appeals recognized (*id.* at 7a), petitioners are "not without fault" in this matter. Instead of promptly pursuing available avenues for judical resolution of this dispute, petitioners simply ignored repeated demands by the Secretary for repayment of the funds. Having chosen this means to enjoy the benefits of not repaying the misspent funds for a number of years, petitioners are in a poor position to seek to place the full cost for their failure to satisfy their debt on the Secretary.[9]

Indeed, the only interest that petitioners advance against these weighty considerations is that if they are required to pay prejudgment interest, they will have less money to spend on their educational system (Pet. 7). But this reflects nothing more than petitioners' desire to "not pay [] any more than [they] ha[ve] to" (*West Virginia*, slip op. 6). Any time a state pays prejudgment interest, there is

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them. In this case, for example, the principal amount due was not paid until July 1986, more than five years after the Secretary submitted his initial demand for payment.

[9] The Secretary did not seek full compensation for the entire time he was deprived of the misspent funds. Instead, he only sought interest from April 16, 1981, a month after the original demand letter. This was nearly two and a half years after he had issued his final administrative determination, and approximately nine years after the funds had been misspent.

necessarily less money to devote to other worthwhile projects. Even where assessment of prejudgment interest "may work a hardship upon the citizens of [the State]" (*id.* at 7), that consideration does not "justify relieving the State of its obligation to compensate the Federal Government fully" for the misspent funds (*id.* at 6).

Petitioners' alternative argument—that the decision below conflicts with *Pennhurst* (Pet. 8-9)—is also without foundation. In *Bell* v. *New Jersey*, 461 U.S. 773, 790 n.17 (1983), this Court explicitly laid to rest the notion that *Pennhurst* limits the remedies available to the Secretary when a state fails to abide by the terms of its Title I grant.[10] Petitioners' suggestion that *Bell* is inapposite because prejudgment interest is a penalty rather than a remedy (Pet. 9), runs directly counter to this Court's recognition of the principle that "interest is an element of complete compensation[:] * * * [it] serves to compensate for the loss of use of money due as damages from the time the claim accrues until judgment is entered, thereby achieving full compensation for the injury those damages are intended to redress" (*West Virginia*, slip op. 5 & n.2).

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[10] In *Arkansas* v. *Block*, 825 F.2d 1254, 1258 n.7 (8th Cir. 1987), a case involving a debt incurred after the effective date of the Debt Collection Act of 1982, the court in a footnote cited the *Pennhurst* analysis as an "alternative rationale [that] also supports our decision." That court, however, like the district court here, overlooked this Court's explanation in *Bell* of the *Pennhurst* analysis.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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